

**REMARKS**

I. Introduction.

The Applicants appreciate the Examiner pointing out the status of the claims. The status of the claims has been indicated in accordance with the Notice of Non-Compliant Amendment. The Applicants respectfully submit the same amendments and remarks that were previously submitted in the Amendment After Final Action.

The Applicants kindly acknowledge that the six rejections identified on page 2 of the final office action were withdrawn. The Applicants respectfully request reconsideration of the rejections and respectfully submit the above amendments, and the following remarks place the application in condition for allowance.

Independent claims 1, 51 and 68 were amended. Claim 2 was canceled without prejudice. Claim 3 was amended for better form. Claims 1, 3-11 and 13-68 are currently pending in the application.

II. The Final Office Action Rejections.

Independent claims 1, 51 and 68 and respective dependent claims 4-11, 13, 49, and 50 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by WO 00/60965 (“the Sheu reference”). Independent claims 1, 51, and 68 and respective dependent 3, 6-9, 13-15, 18-30, 34, 38, 39, 49, 54-58, and 60-65 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,897,894 to Glass (“the Glass patent”). These are the only two remaining rejections of independent claims 1, 51 and 68. The remaining rejections concern dependent claims.

Dependent claims 16 and 17 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the Sheu reference in view of U.S. Patent No. 3,851,574 to Katz et al. (“the Katz patent”).

Dependent claims 18-30, 34-43, 45, 46, 54-63 and 65 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the Sheu reference in view of U.S. Patent No. 5,919,505 to Monsalve (“the Monsalve patent”).

Dependent claims 47, 48, 66 and 67 were rejected under 35 U.S.C. § 103(a) as allegedly

being unpatentable over the Sheu reference in view of the Monsalve reference and further in view of the Glass patent and U.S. Patent No. 4,904,488 to LaBaw et al. ("the LaBaw patent").

Dependent claims 52 and 53 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over the Sheu reference.

Dependent claims 31-33, 41-47 and 66 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the Glass patent in view of the LaBaw patent.

In order to expedite prosecution of the application, the Applicants respectfully submit the above amendments and the following remarks.

III. Independent Claims 1, 51 and 68 and Respective Dependent Claims 4-11, 13, and 49-51 are not Anticipated by the Sheu Reference.

Claims 1, 51 and 68 are independent. Claim 1, as currently amended, recites in part:

"a plurality of sugar pellets in the container ... wherein the sugar pellets are substantially free of an emulsifying agent and not homogeneously mixed with the unpopped kernels ...

an oil component in the container, wherein more of the oil component is contained in the container with the unpopped kernels than is maintained with the sugar pellets...

wherein the kernels act generally as a buffer between the unhomogenized sugar pellets and the oil component, thereby reducing burning of the sugar pellets when the product is heated."

Independent claims 51 and 68 include similar limitations.

The cited Sheu reference does not disclose or suggest all of the elements and limitations of amended independent claims 1, 51 and 68, as required under §102(b). The Sheu reference describes a microwave popcorn composition having a glaze coating. A hard candy base that is normally employed in a hard confectionary includes a mixture of sugar and other bulking agents kept in an amorphous or glassy condition. (Sheu, p. 5, lines 30-37.) The hard candy base, emulsifying agent, and water are mixed together and heated to form the amorphous glaze coating premixture for the popped corn kernels. (Sheu, p. 3, lines 28-35.) The glaze coating premixture is heated and then

cooled and worked as a plastic-like mass. When cooking is complete, the mass is a semi-solid and has a plastic-like consistency. Once the candy has been properly tempered, it can be cut into workable portions or formed into desired shapes. (Sheu, p. 8, lines 8-33.) The Sheu reference explains that “the amorphous glaze coating premixture is placed in close contact with unpopped corn kernels.” (Sheu, p.4, lines 26-27). Two specific “close contact” configurations are described.

In the first “close contact” configuration, an amorphous glaze coating premixture is placed as an “intimate mixture” with unpopped corn kernels. (Sheu, p. 10, lines 29-30). Corn syrup and fine granular sugar, among other ingredients, are mixed well together with the kernels to form a slab. The slab is cooled and inserted to the middle compartment of the container.

In the second “close contact” configuration, the amorphous glaze coating premixture is placed as a “separate phase above the unpopped corn kernels.” (Sheu, p. 11, line 13). Corn syrup, fine granular sugar, among other ingredients, are mixed to form a slab. Corn kernels and fat (or oil) are placed on the center bottom portion of the bag “as one single layer.” The cooled slab is inserted to the middle compartment of the bag. (Sheu, p. 1, line 36 (referring to oil or fat); p. 4, lines 26-28; p. 11, lines 12-30).

The first configuration described in the Sheu reference, however, fails to disclose or suggest “wherein the sugar pellets are not homogeneously mixed with the unpopped kernels” as recited in independent claims 1, 51 and 68. In contrast, the first configuration described in the Sheu reference refers to an “intimate mixture” of glaze and kernels. Further, the Sheu reference teaches away from sugar pellets not being homogeneously mixed with unpopped kernels by using an “intimate mixture.”

Independent claims 1, 51 and 68 also call for “wherein more of the oil component is contained in the container with the unpopped kernels than is maintained with the sugar pellets ... the kernels act generally as a buffer between the unhomogenized sugar pellets and the oil component, thereby reducing burning of the sugar pellets when the product is heated.” The first configuration discussed in the Sheu patent involving an “intimate mixture” clearly does not disclose or suggest the “buffer” limitations of the claims and teaches away from the “buffer” limitations. Similarly, the second example described in the Sheu reference does not disclose or suggest kernels that act as a

buffer between sugar pellets and oil. Rather, the Sheu reference explains that the kernels and fat (oil) in the second example are mixed together to form “one single layer.” Accordingly, the Sheu reference fails to disclose or suggest the “buffer” limitations of claims 1, 51 and 68. Further, the Sheu reference teaches away from the “buffer” limitations since it refers to intimate mixtures (first configuration) and single layers of kernels and fat or oil (second configuration).

Based on the forgoing amendments and remarks, the Applicants respectfully submit that independent claims 1, 51, and 68, and respective dependent claims 4-11 and 13, 49 and 50, which incorporate all of the elements and limitations of their respective independent claims, are novel and unobvious over the Sheu reference. Accordingly, Applicants respectfully request that the rejection of these claims under 35 U.S.C. §102(b) be withdrawn.

IV. Independent Claims 1, 51, and 68 and Respective Dependent Claims 3, 6-9, 13-15, 18-30, 34, 38, 39, 49, 54-58, and 60-65 are not Anticipated by the Glass Patent.

The Glass patent is generally directed to microwave popcorn compositions having a charge of kernel popcorn, fat and coarse salt having an enlarged particle size. (Glass, Abstract; col. 3, lines 42-51). A fat slurry is prepared by mixing the fat with salt and optional ingredients (such as sugar). (Glass, col. 3, line 62; col. 5, line 55; col. 6, line 2). The slurry is sprayed into the microwave popcorn bag after the unpopped kernels have been introduced into the bag. (Glass, col. 6, lines 7-12; col. 7, lines 36 to 38). Thereafter, the bag is advanced to the “third salt and/or other particulate (such as sugar) filling station.” (Glass, col. 6, lines 60 to 64; col. 7, lines 39 to 41). More specifically, a first station 51 is a popcorn filling station. The fat addition is charged to the bag at a second station. (Glass, col. 7, lines 36-38). The kernel popcorn and slurry addition can also be done in a single station concurrently. (Glass, col. 8, lines 36-38). Salt or other particulates are added at a third station. (Glass, col. 7, lines 36-47; col. 8, lines 36-38). The Glass patent also explains that the products are preferably sugar free in order to minimize sugar scorching. (Glass, col. 6, line 56; col. 7, line 5; col. 7, lines 13-14).

Initially, the Glass patent fails to disclose or suggest “sugar pellets” as recited in independent claims 1, 51 and 58. Rather, the Glass patent merely refers to sugars generally. (Glass, col. 5, line

66, col. 6, line 63). While the Glass patent describes “coarse” or “enlarged” salt or salt crystals, the Glass patent does not describe these features in the context of sugars. Further, the Glass patent teaches away from “a plurality of sugar pellets in the container” since the Glass patent notes that sugar-free products are “highly preferred” to minimize scorching. (Glass, col. 7, lines 1-14).

The Glass patent also does not disclose or suggest “wherein the kernels act generally as a buffer between the unhomogenized sugar pellets and the oil component, thereby reducing burning of the sugar pellets when the product is heated” as claimed. The Glass patent merely explains that a bag is filled with kernel popcorn at a first station, fat is charged to the bag at a second station, and salt or other particulates (such as sugar) are added to the bag at a third station, and that the kernel popcorn, fat, and salt can be positioned in the middle portion of the bag. (Glass, col. 6, lines 10-12 (fat or slurry is “sprayed” into the bag); col. 7, lines 23-41; col. 8, lines 36-38). The Glass patent also explains that addition of kernel popcorn and slurry (with fat) can be done concurrently at a single station. (Glass, col. 8, lines 36-38). Thus, the Glass patent fails to disclose or suggest kernels acting as a buffer between sugar pellets and oil.

Based on the forgoing amendments and remarks, the Applicants respectfully submit that independent claims 1, 51, and 68, and respective dependent claims 3, 6-9, 13-15, 18-30, 34, 38, 39, 49, 54-58, and 60-65, which incorporate all of the elements and limitations of respective independent claims 1 and 51, are novel or unobvious over the Glass patent. Accordingly, Applicants respectfully request that the rejection of these claims under 35 U.S.C. §102(b) be withdrawn.

V. Dependent Claims 16-30, 31-43, 41-48, 52-63, 65-67 are Patentable Over Their Respective Cited References.

The remaining rejections concern only dependent claims. The dependent claims incorporate all of the elements and limitations of their respective independent claims 1 and 51. The other cited references, the Katz, Monsalve, LaBaw, do not cure the deficiencies of the Sheu reference and the Glass patent.

The Monsalve patent describes a popcorn charge having a certain fat and moisture contents. The Applicants note that the Monsalve patent discloses similar ingredients and bag configuration as

the previously discussed Glass patent and does not cure the previously discussed deficiencies relative to the amended independent claims . (See, e.g. Monsalve, Fig. 1, col. 3, lines 16-20 (dispensing popcorn and spraying slurry); (col. 6, lines 33-41; col. 7, lines 11-24 and Glass, Fig. 1; col. 6, lines 1-12).

The Katz and LaBaw patents also do not cure the previously discussed deficiencies and each teaches away from certain claim limitations. The Katz patent teaches away from “wherein the kernels act generally as a buffer between the sugar pellets and the oil component” since the Katz patent specifically explains that the “popcorn 32 is uniformly mixed with the coating composition.” (Katz, col. 2, lines 20-21, 40-41 (uniformly mixed); Fig. 2 (illustrating mixture)). The LaBaw patent teaches away from “wherein the kernels act generally as a buffer between the sugar pellets and the oil component” since it explains that “[a]fter sealing one end of the bag, kernels of corn and then hot, liquefied oil or shortening-mixed with salt and coloring can be injected into the bag. (LaBaw col. 4, lines 12-14; col. 4, lines 51-54; col. 7, lines 45-61; col. 10, lines 55-62 (popcorn, oil and sugar mixed together); Fig. 2 and Fig. 3 (illustrating mixture)).

Based on the forgoing amendments and remarks, the Katz, LaBaw and Monsalve patents do not cure the multiple deficiencies of the Sheu reference and the Glass patent. Thus, the asserted combinations would not form the elements and limitations of independent claims 1, 51 and 68. Thus, the Applicants respectfully submit that dependent claims 16-30, 31-43, 41-48, 52-63, 65-67, which incorporate all of the elements and limitations of respective independent claims 1 and 51, are patentable over all of the cited references. Accordingly, Applicants respectfully request that the rejections under 35 U.S.C. §103(a) be withdrawn.

**VI. Conclusion.**

In view of the foregoing remarks, Applicants submit that pending claims 1, 3-11 and 13-68 are all in condition for allowance and respectfully request that all of the rejections be withdrawn. A timely indication of allowance is respectfully requested. If there are any remaining issues that can be addressed by telephone, the Applicants invite the Examiner to contact the undersigned at the number indicated below.

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Respectfully submitted,

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